

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-03/11-152
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, denying his application for general assistance to provide funds for heating fuel. The issue is whether the petitioner meets the criteria for general assistance.

An expedited telephone fair hearing was held on March 15, 2011.¹ The decision is based on the following evidence.

FINDINGS OF FACT

1. The petitioner is a disabled individual; his sole source of income is Social Security Disability benefits in the amount of \$1,078.00 per month. The petitioner receives Section 8 assistance and his share of his monthly rent is

¹The petitioner has fair hearings pending before the other hearing officer. This case is limited to the general assistance denial for funds to pay for propane.

\$194.00. Petitioner is responsible for all utilities including propane for heat.²

2. The petitioner's last propane delivery was February 11, 2011. According to petitioner, he has been without heat for approximately one week.

3. The petitioner applied for general assistance on or about March 8, 2011 stating that he was advised to do so by Assistant Attorney General S.S. and Hearing Office D.J.

4. The Department denied his application for general assistance finding that petitioner's income is greater than the general assistance monthly income limit of \$475.00 for a one-person household.

5. The Department was asked to look at petitioner's case under the rules for catastrophic general assistance because petitioner has no heat.

6. The Department again denied petitioner's application finding that the rules governing constructive eviction do not apply because petitioner's landlord did not cause the lack of heat.

² Petitioner's monthly budget includes \$40.00 for electricity, \$25.00 for basic phone and \$614.35 for transportation related expenses (\$67.00 for insurance, \$247.35 for car payments and \$300.00 for gasoline).

ORDER

The Department's decision to deny general assistance is affirmed.

REASONS

The General Assistance program is a safety net program that is available in limited situations provided that funds are available. 33 V.S.A. § 2103.

Applicants may qualify for general assistance in either non-catastrophic or catastrophic situations. 33 V.S.A. § 2103 and W.A.M. § 2600.

In non-catastrophic situations, the applicant's income for the prior thirty days must be less than the applicable income limit. W.A.M. § 2610(B)(1). The applicable income limit for a household of one is \$475.00 per month. Petitioner's Social Security payment is greater than the income limits for non-catastrophic general assistance.

The income limitation does not apply in catastrophic situations, but the applicant must show that the rules defining catastrophic general assistance apply. W.A.M. §§ 2620 *et seq.*

Catastrophic situation is defined at W.A.M. § 2621 and includes death of a spouse or dependent child, a natural disaster, or a court-ordered or constructive eviction "due to

circumstances over which the applicant had no control". The question in petitioner's case is whether the lack of heat in his apartment falls under the meaning of constructive eviction.

W.A.M. 2622 defines "constructive eviction" as follows:

Constructive eviction is defined as any disturbance caused by a landlord, or someone acting on the landlord's behalf, that makes the premises unfit for occupation. The motive for the disturbance, which may be inferred from the act, is the eviction of the occupant.

A situation in which the landlord has not provided heat, utilities, or water within a reasonable period of time and there is an agreement to furnish these items shall be considered a constructive eviction when the applicant is pursuing legal resolution of these offenses through the Vermont Department of Health or appropriate local officials. . . .

Constructive eviction does not apply in petitioner's case. Petitioner is responsible for his heat and other utilities, not the landlord.

The general assistance regulations are narrowly drawn and do not cover petitioner's situation. Because the Department acted in conformance with the regulations, the Department's decision to deny general assistance is affirmed.

3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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